

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

LUIS MONJE,	)	
	)	
Petitioner,	)	4:09CV3005
	)	
v.	)	
	)	
ROBERT HOUSTON,	)	MEMORANDUM AND ORDER
	)	
Respondent.	)	
_____	)	

This matter is before the Court on petitioner's Notice of Appeal and Request for Certificate of Appealability (Filing No. [16](#)). On August 24, 2009, the Court dismissed petitioner's habeas corpus claims with prejudice and entered judgment against him (Filing Nos. [14](#) and [15](#)). Petitioner thereafter filed a timely notice of appeal (Filing No. [16](#)).

***I. Motion for Leave to Appeal In Forma Pauperis***

Petitioner is a prisoner who has previously been granted leave to proceed in forma pauperis ("IFP") (Filing No. [3](#)). Federal Rule of Appellate Procedure 24(a)(3) states:

(a) Leave to Proceed in Forma Pauperis . . . .

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court -- before or after the notice of appeal is filed -- certifies

that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding[.]

Id. On its own motion, the Court finds that, because petitioner was previously given leave to proceed IFP, he may now “proceed on appeal in forma pauperis without further authorization” in accordance with Federal Rule of Appellate Procedure 24.

## ***II. Request for Certificate of Appealability***

Before a petitioner may appeal the dismissal of a petition for writ of habeas corpus, a “Certificate of Appealability” must issue. See 28 U.S.C. § 2253(c).

A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Such a showing requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (internal quotation marks omitted), citing Barefoot v. Estelle, 463 U.S. 894 (1983) (defining pre-AEDPA standard for a certificate of probable cause to appeal).

The Court has carefully reviewed the record and petitioner’s Request for Certificate of Appealability (Filing No.

16). Petitioner has failed to demonstrate that reasonable jurists would find this Court's ruling debatable or wrong. For the reasons stated in its August 24, 2009, memorandum opinion and order and judgment (Filing Nos. 14 and 15), which dismissed petitioner's claims on the merits, the Court declines to issue a Certificate of Appealability.

IT IS ORDERED:

1. Petitioner is granted leave to proceed IFP on appeal.

2. Petitioner's Request for Certificate of Appealability (Filing No. 16) is denied without prejudice to reassertion before the Eighth Circuit.

3. The clerk of the court shall provide the Court of Appeals a copy of this Memorandum and Order.

DATED this 20th day of November, 2009.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court